SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

October Term 1966

No. 679

DARWIN CHARLES BROWN,

Petitioner,

v.

JOHN W. FOLLIN, Auditor of the U. S. District Court for the District of Columbia, *et al.*,

Respondents.

PETTTION FOR REHEARING

DARWIN CHARLES BROWN
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223-2770

Petitioner

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PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its order of December 12, 1966, denying the petition for a writ of certiorari, and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit as prayed for in the petition filed October 14, 1966, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

1. Judge Alexander Holtzoff stated as follows in his memorandum (R 31-34) filed in this matter in the United States District Court for the District of Columbia on September 26, 1963.

> "The Auditor of this Court performs an important and vital function in supervising and auditing the accounts of fiduciaries. In contested matters, such as this, he becomes a master and must act in accordance with rules governing proceedings before Masters, Rule 53(a) and (e)(1) of the Federal Rules of Civil Procedure. In such instances it is not sufficient for the Master merely to restate the account. *He must make specific findings of fact. Evidentiary findings are desirable, but in addition ultimate findings are indispensable. . . . It therefore becomes* necessary to remand this proceeding to the Auditor for additional findings of fact and conclusions of law." (R 33)

The exact and precise matter in controversy was whether the funds in question were part of the estate being administered by Petitioner under the supervision of the Court and its Auditor. Petitioner adduced evidence which clearly showed that the funds in question belonged to third persons and not to the estate. Nevertheless, in three lengthy reports filed by the Auditor (who is one of the Respondents herein-named) the Respondent Follin, did not make any finding of fact or conclusion of law on the crux of the controversy which was also the key jurisdictional question, namely, whether the funds in question belong to the estate being administered by Petitioner (R 1-25, 42-51, and 83-102). Nevertheless, the respondent proceeded to claim jurisdiction over the funds as if they had belonged to the estate.

It has long been the law that just as a judge in a trial without a jury is required to make adequate findings so that his conclusions may be reviewed by reviewing court, so a master, in an action to be tried without a jury, is required to make findings of fact so that his conclusions may be adequately reviewed by the trial judge. The standard, as set forth in *United States v. Cunningham*, C.A. 4, N.C., 1957, 246 F.2d 330, and in *In re Cesari*, C.A. Ill., 1954, 217 F.2d 424, is that findings should be so explicit as to give the reviewing Court a clear

understanding of the basis of the Master's decision and to enable the reviewing Court to determine the grounds on which the Master reached his conclusion.

The elaborate reports of the Respondent (the costs of which are sought to be taxed to Petitioner) fall demonstrably so short of the above standard as to result in the effective deprivation of Petitioner of his rights to due process of law in the proceedings below.

2. The District Court also failed to make any finding on the key question in controversy, namely whether the funds in question belong to the Estate being administered by Petitioner. In fact, the District Court made no findings whatsoever, and thus did not cure the fatal defects in the reports of the Respondent in his capacity as Master.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

DARWIN CHARLES BROWN

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Petitioner

CERTIFICATE OF PETITIONER

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

DARWIN CHARLES BROWN
Petitioner